

## **DRAFT MINUTES HEARING OFFICER June 5, 2018**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

### **STUDY SESSION 4:35 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Sydney Bethel, Planning Technician  
Dalton Guerra, Planning Technician  
Blake Schimke, Administrative Assistant II

**There were 6 interested citizens present at the study session.**

- Staff and Hearing Officer discussed overview of the scheduled cases.

### **REGULAR SESSION 5:10 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Sydney Bethel, Planning Technician  
Dalton Guerra, Planning Technician  
Blake Schimke, Administrative Assistant II

**There were 10 interested citizens present at the regular session.**

**Meeting convened at 5:10 PM and was called to order by Ms. MacDonald. She stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by June 19, 2018 at 3:00 PM, to the Community Development Department.**

1. The following was noted:

- **Agenda Item No. 1**

**May 15, 2017 Hearing Officer Minutes**

Vanessa MacDonald, Hearing Officer, stated that the May 15, 2018 Hearing Officer Minutes had been reviewed and were approved.

1. Request approval to abate public nuisance items at the LEON PROPERTY, located at 1850 East Fremont Drive. The applicant is the City of Tempe. (CE179089)

ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

1. Request a Use Permit Standard (ZUP180053) to reduce the required front yard setback (open structure) by no more than 20% for the **JEFFREY RESIDENCE (PL180145)**, located at 1033 East El Freda Road. The applicants are Philip and Rose Jeffery.

Dalton Guerra, Planning Technician, gave the following overview of this case:

- The JEFFERY RESIDENCE is located on lot 38 of the Buena Vista Ranch Subdivision North of E Warner Rd and East of S Rural Rd within the AG, Agricultural District.
- The applicants, Philip and Rose Jeffery, are requesting a Use Permit Standard to reduce the required front yard setback (open structure) by 20%. This will result in a reduction of the setback standard by seven feet (7'-0"), thus going from 35'-0" to 28'-0". The proposed extension will encroach 7'-0" into the required 35'-0" front yard setback (open structure).
- The applicant is proposing a patio extension in the front yard setback that will be 8'-6" in height and the canopy area will cover 400 square feet.
- There have been four different requests for a Use Permit Standard to reduce required setbacks approved by the Hearing Officer in the Buena Vista Ranch Subdivision since 2010. These requests were for 20% reductions in the required setbacks to build additions to the existing homes.
- To date, there has been one public inquiry on the proposed project. However, there was no voice of support or opposition to the project.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports approval of the requested Use Permit Standard and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald made a clarification to the audience that this project was not a variance, rather a use-permit standard, that is unique to Tempe. She noted it allows for encroachment of an additional 20% in a setback.

Ms. MacDonald acknowledged that the residents were doing this project to remediate the loss of the tree.

Ms. MacDonald asked if the resident, Ms. Jeffery's, if she had anything to further add

Ms. Jeffery responded that she had nothing further to add, other than they wanted a shade structure to better enjoy their front yard.

Ms. MacDonald asked if she understood and agreed to the conditions of approval

Ms. Jeffery responded in agreement

Ms. MacDonald asked if there were any members of the audience who wished to address this request. There was no one

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic;* Ms. MacDonald stated that this would not

create an increase in vehicular or pedestrian traffic.

2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

#### DECISION:

Ms. MacDonald Approved the use permit (ZUP180053) Standard to reduce the required front yard setback (open structure) by no more than 20% for the JEFFREY RESIDENCE, located at 1033 East El Freda Road, subject to the assigned Conditions of Approval as follows:

1. The Use Permit Standard is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit Standard is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

2. Request a Use Permit (ZUP180054) to allow massage therapy services for **ONE TRIBE YOGA & WELLNESS**, located at 1006 East Warner Road, Suite No. 111 & 112. The applicant is Jason Zelich. **(PL180141)**

Sydney Bethel, Planning Technician, gave the following overview of this case:

- ONE TRIBE YOGA & WELLNESS is proposing to operate in Suite No.(s) 111 & 112 in the Landis Crossing Neighborhood Center located at 1006 East Warner Road in the PCC-1, Planned Commercial Center Neighborhood District. The Landis Crossing Neighborhood Center is located just south of the Buena Vista Ranchos Homeowners Association and to the east of the Tally Ho Farms North Neighborhood Association.
- ONE TRIBE YOGA & WELLNESS is requesting a Use Permit to allow massage therapy services. The business is slated to open in the summer of 2018 and will employ approximately 8 -10 yoga teachers, 4- 5 licensed massage therapists and 4- 5 front desk staff members. At any single time or shift, there may be two (2) massage therapists, one (1) yoga teacher, one (1) front desk staff and potentially two (2) massage clients and 10-15 yoga students.
- There will be two (2) sperate massage therapy rooms.
- In 2007, the City of Tempe Hearing Officer approved a similar request by SOLE SPORTS RUNNING ZONE for a Use Permit to allow massage therapy services at in the same complex in Suite No. 104.
- To date, no public input has been received by staff.
- Based on the information provided by the applicant and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the

conditions provided in the staff report.

Ms. MacDonald replied to Ms. Bethel that she had no questions for her and invited the applicants to the podium.

Mr. Jason Zelich was present to represent this case.

Mr. Zelich had no questions but did add his excitement for opening his business in Tempe.

Ms. MacDonald asked if Mr. Zelich understood and agreed to the conditions of approval

Mr. Zelich responded that he may have a while ago and could not recollect

Ms. MacDonald then decided to review the conditions of approval

Mr. Zelich responded in agreement

Ms. MacDonald asked if there were any members of the audience who wished to address this request. There was no one.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this Use Permit would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures and uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

#### **DECISION:**

Ms. MacDonald approved the use permit request (ZUP180054) to allow massage therapy services for ONE TRIBE YOGA & WELLNESS, located at 1006 East Warner Road, Suite No. 111 & 112, subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Any intensification or expansion of use shall require a new Use Permit.

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3. Request a Use Permit (ZUP180038) to allow a wireless telecommunication facility (monopalm) for **T-MOBILE TOWERCOM RIAZZI**, located at 2700 South Mill Avenue. The applicant is Joseph Engbrocks of Centerline Solutions. **(PL180092)**

Lee Jimenez, Senior Planner, gave the following overview of this case:

- T-Mobile Towercom Riazzi is proposing a new stealth wireless telecommunication facility on the southwest corner of West Alameda Drive and South Mill Avenue in the CSS, Commercial Shopping & Services District.
- The facility will be concealed as a palm tree, standing 65 feet tall, and provide a total of nine (9) antennas and nine (9) radio remote heads on three (3) sectors, three (3) per sector, at the 52-foot center of radiation height. The equipment enclosure will be constructed of slump block and painted to match the on-site building/structures.
- T-Mobile Towercom Riazzi will be the second monopalm facility on this property. The existing monopalm stands 65 feet tall and is located directly north of the proposed monopalm. It was approved by the Hearing Officer on September 15, 2009.
- Staff recommended installation of new Mexican Fan Palms to help conceal the monopalms. A condition is provided to distribute the proposed palm trees along the landscape strip to the west of the existing and proposed facilities.
- To date, staff has received a phone call and email in opposition to the use permit request.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports this request and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald suggested to see the photo simulations that were provided by the applicant for the proposed monopalm facility.

Mr. Jimenez noted that he conditioned the planting of the new trees to be along the landscape strip to better hide the structure.

Mr. Joe Engbrocks was present to represent the case

Mr. Engbrocks stated that the placement of this tower was significant and that this could bring better wireless connectivity to the surrounding 1000 households. He also expressed that there were no existing structures that could meet the needs for the proposed coverage.

Mr. Engbrocks also noted that this project would meet all of the requirements for a use permit, adding that he would like to open discussion on condition number four (4), within the conditions of approval, regarding the height of the

steel and overall height of the structure.

Mr. Engbrocks stated that he had a question regarding the stipulation requiring the height of the steel being 55'. Mr. Engbrocks stated that the absolute lowest they could go 56' top of steel.

Mr. Jimenez answered Mr. Engbrocks in saying there was a concern of concealment and whether the fronds would do an adequate job.

Mr. Engbrocks replied to Mr. Jimenez saying, that the fronds would conceal the top of steel at 55', 56', or 60'.

Mr. Jimenez then asked if there would be at any time in the future a need to raise the height for the top of steel or that the monopalm itself would be taller than 65' - top of frond.

Mr. Engbrocks replied to Mr. Jimenez saying, that the tower is strategically placed and that it cannot go any higher, and that it is already lowered to not interfere with the existing cell tower.

Mr. Jimenez then stated to the Hearing Officer that there was no issue regarding the new proposed height of 56', as long as the conceal facility does indeed conceal.

Ms. MacDonald stated that she had a speaker card from a member of the public and invited her to speak.

Ms. Mary Oertle, Tempe resident, spoke in opposition to the new proposed cell tower. She mentioned that she had been renovating their home, which is located directly behind the proposed site for the monopalm. She expressed that her property is the most impacted by the new request. She also added that she purchased the property knowing that there is an existing tower and that her landscaping does a sufficient job in hiding it. However, the new tower will be in plain sight and closer to her property. Ms. Oertle brought forth her own possible locations for the tower to be placed. She asked that the tower be moved to the northeast corner of the property.

Ms. MacDonald asked the applicant, Mr. Engbrocks, if there were any other locations on the site or off site that would be sufficient for the tower.

Mr. Engbrocks expressed that no, there weren't any other locations in the area that would be able to meet their needs.

After discussion with staff, it was agreed to modify one (1) of the assigned Conditions of Approval as follows:

**Condition of Approval No. 4**

The monopalm shall be no greater than sixty-five feet (65'-0") in height to top of frond and **fifty-six feet (56' 0")** ~~fifty-five feet (55'-0")~~ top of pole/structure. **MODIFIED BY HEARING OFFICER**

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic;* Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level*

*exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.

3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this Use Permit would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures and uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

**DECISION:**

Ms. MacDonald approved a Use Permit (ZUP180038) to allow a wireless telecommunication facility (monopalm) for **T-MOBILE TOWERCOM RIAZZI**, located at 2700 South Mill Avenue subject to the following assigned Conditions of Approval:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. The monopalm shall be no greater than sixty-five feet (65'-0") in height to top of frond and **fifty-six feet (56' 0")** ~~fifty-five feet (55'-0")~~ top of pole/structure. **MODIFIED BY HEARING OFFICER**
5. The monopalm shall be anatomically correct and provide a minimum of fifty-five (55) palm fronds, evenly distributed to conceal the entire length of antennae and equipment.
6. The pole structure shall be clad with faux bark from the base to the height of the first palm frond.
7. All antennae and equipment shall be finished to match palm fronds or faux bark.
8. All cables shall be concealed within the pole structure.
9. No climbing pegs are permitted on the pole structure.
10. To further conceal the monopalm, relocate and disburse the four (4) new Mexican Fan Palm trees along the perimeter of the equipment enclosure. All new palm trees shall be a minimum of 25 feet in height. Details to be approved during Building Safety Plan Review.
11. Maintain a minimum of 20 feet separation from the new shade tree to light post. Details to be approved during Building Safety Plan Review.
12. The proposed equipment enclosure shall be constructed of similar material and color to match the existing building. Details to be approved during Building Safety Plan Review.

13. A weather resistant emergency contact information sign shall be posted on the site and shall be visible to the public.
14. Any addition to the existing height or change in appearance of the monopalm, as determined by the Community Development Director, or designee, to facilitate possible co-location shall require a use permit.
15. The monopalm shall be removed within thirty (30) days of discontinuance of the tower.

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4. Request a Use Permit (ZUP180055) to allow entertainment as an accessory use (indoor and outdoor) for **ILLEGAL PETE'S**, located at 525 South Mill Avenue. The applicant is Benjamin L. Tate of Withey Morris, PLC. **(PL180148)**

Lee Jimenez, Senior Planner, gave the following overview of this case:

- ILLEGAL PETE'S (PL180148) is proposing to operate a restaurant with entertainment as an accessory north of East 6th Street and east of South Mill Avenue in the CC, City Center District, and within the TOD, Transportation Overlay District.
- The entertainment will occur on the northeast corner in the interior and patio area. The purpose of the entertainment area is to provide a stage for music acts and other performers and dancing area for guests.
- The entertainment will consist of top 40 DJs, bands, comedy, and other miscellaneous acts throughout the year.
- The site has historically been a restaurant; most recently, My Big Fat Greek Restaurant which operated with a restaurant liquor license.
- Hours of operation are proposed from 7am to 12am, Monday through Wednesday, 7am to 2:30am, Thursday & Friday, 9am to 2:30am, Saturday, and 9am to 12am on Sundays.
- To date, one letter was received by staff from a resident of the Orchid House Building, located at 21 East 6<sup>th</sup>. The letter expressed concern for potential disruptive behavior related to low frequency, amplified music like other nearby outdoor uses. He was concerned about the potential of this new business to increase the frequency and severity of the disturbances already experienced in the area.
- A security plan is required for this proposed use. Tempe Police Crime Prevention Unit assisted in reviewing the proposed conditions of approval.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports this request and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Mr. Benjamin Tate was present to represent the case.

Mr. Tate acknowledged the staff report and that there were no further questions regarding the Conditions of Approval.

Ms. MacDonald encourage the applicant to get in contact with a concerned citizen who could not attend the meeting as a gesture confirming their plans for the site.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic;* Ms. MacDonald stated that this would not

create an increase in vehicular or pedestrian traffic.

2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed – Which she added is important considering the bars and venues that are located in the downtown area.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this Use Permit would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures and uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

## DECISION

Ms. MacDonald approved the Use Permit (ZUP180055) to allow entertainment as an accessory use (indoor and outdoor) for **ILLEGAL PETE'S**, located at 525 South Mill Avenue, subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Outdoor entertainment shall be limited to the following types: recorded music by a DJ or from an acoustical instrument (e.g. guitar, violin, and saxophone). Live amplified bands and drums are prohibited, unless authorized through a special event permit on a specified date.
6. Outdoor entertainment to begin no earlier than 11 a.m. and end no later than 10 p.m., Sunday-Thursday, and 12 am, Friday and Saturday.
7. Indoor entertainment to cease no later than 1:55 a.m., daily.
8. Any intensification or expansion of use, including other types of outdoor entertainment, shall require a new Use Permit.
9. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before July 5, 2018.
10. Provide four (4) bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.

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**ANNOUNCEMENTS**

- Mr. Williams noted that the next Hearing Officer public hearing is scheduled for Tuesday, June 19, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.
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With no further business, the public hearing adjourned at 5:43 PM.

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Prepared by: Blake Schimke, Administrative Assistant II  
Reviewed by:



Steve Abrahamson, Principal Planner  
For Vanessa MacDonald, Hearing Officer

SA:bs